

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**OHIO VALLEY ENVIRONMENTAL
COALITION, COAL RIVER MOUNTAIN
WATCH, WEST VIRGINIA HIGHLANDS
CONSERVANCY, and THE SIERRA CLUB,**

Plaintiffs,

v.

Civil Action No. 3:08-0979

**UNITED STATES ARMY CORPS OF
ENGINEERS; ROBERT L. VAN ANTWERP,
Commander in Chief of Engineers, U.S. Army
Corps of Engineers; DANA R. HURST,
Colonel, District Engineer, U.S. Army Corps of
Engineers, Huntington District,**

Defendants,

and

**HOBET MINING COMPANY, LLC,
FOLA COAL COMPANY, LLC,
LOADOUT, LLC, and COAL RIVER
MINING, LLC,**

Intervenor-Defendants.

**INTERVENOR-DEFENDANT FOLA COAL COMPANY, LLC'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Intervenor-Defendant Fola Coal Company, LLC ("Fola"), pursuant to Rule 56 of the Federal Rules of Civil Procedure, hereby moves for partial summary judgment against Plaintiffs Ohio Valley Environmental Coalition ("OVEC"), Coal River Mountain Watch ("CRMW"), West Virginia Highlands Conservancy ("WVHC") and the Sierra Club (collectively "Plaintiffs") as to the procedural issues contained in Count One of Plaintiffs' Fourth Amended and Supplemental Complaint on the grounds that there is no genuine issue as to any material fact, and therefore

Fola is entitled to judgment as a matter of law. Fola's arguments are set forth more fully in the accompanying Memorandum of Law in Support of its Motion for Partial Summary Judgment.

FOLA COAL COMPANY, LLC

By SPILMAN THOMAS & BATTLE, PLLC

/s/ James S. Crockett, Jr.

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CERTIFICATE OF SERVICE

I, James S. Crockett, Jr., counsel for Fola Coal Company, LLC, hereby certify that on April 6, 2009, I electronically filed the foregoing **Intervenor-Defendant Fola Coal Company, LLC's Motion for Partial Summary Judgment** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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